

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2640

SPONSOR: Senator Villalobos

SUBJECT: Parent Coordination Program

DATE: March 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AAV</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for SB 2640 provides the statutory framework for parenting coordination which is a process the court may use to assist certain parents in resolving their child related disputes and implement their parenting plan. The bill provides for the circumstances under which parenting coordination may be ordered, defines the duties of the parent coordinator, provides for minimum qualifications of a parent coordinator, prohibits parenting coordinators from performing certain other functions, and provides the parenting coordinator with limited immunity.

This bill substantially amends section 61.046 of the Florida Statutes. The bill creates section 61.125 of the Florida Statutes.

II. Present Situation:

With the continuous growth in family law cases and in the number of parties not represented by attorneys, greater attention is being given to the appropriate utilization of the judicial system for dispute resolution.¹ The effectiveness of a traditionally adversarial judicial process in adequately resolving family legal problems that are often intertwined with highly charged emotional and social family problems has also increasingly come into question. As a result, alternative avenues to assist families to resolve their disputes have emerged.

¹ The number of domestic relation court filings in Florida increased by 68.5 percent from 1986 to 2000 and juvenile delinquency and dependency court filings increased by 56.6 percent. Also, an examination of family court cases conducted by the Office of State Courts Administrator found that petitioners in dissolution of marriage filings were represented by attorneys in 52 percent of the cases reviewed. (Senate Interim Project Report 2002-121, December 2001, *Review of Family Courts Division and the Model Family Court: Other Services and Systems for Children and Families*)

One evolving form of dispute resolution is parenting coordination. Parenting coordination takes different forms but, in whatever form, it is a process to assist the very high conflict families who do not have the ability to enter into collaborative discussions to resolve disputes about child related issues. Parenting coordination differs from mediation primarily in the level of advice and direction that parenting coordinators are able to offer or even impose. Currently, parenting coordination is practiced in nine of Florida's judicial circuits.² The Florida Chapter of the Association of Family and Conciliation Courts reports that, as the use of parenting coordinators continues to grow, there is a need for some regulation of the practice to ensure that it is utilized appropriately and in a way that preserves the parties' rights to have access to the court, as well as to continue the natural growth of the process.

Florida law currently provides for the court to order the payment of support from either or both parents and to determine all matters relating to the custody of the child (s. 61.13(1) and (2), F.S.). The policy of the state, as set forth in s. 61.13(2)(b), F.S., emphasizes the frequent and continuing contact of both parents with each child after a separation or dissolution of marriage and encourages parents to share the rights and responsibilities, as well as the joys, of childrearing. Shared parental responsibility is to be ordered unless determined detrimental to the child (s. 61.13(2)(b), F.S.). It is reported that the court judgements for dissolution of marriage or paternity action which set forth determinations relative to a child and parenting responsibilities are often referred to as the parenting plan. For some parents, the brevity of the determinations for child and parenting issues usually found in these court judgements can provide an inadequate framework for managing their parental responsibilities. Parenting coordinators are sometimes used to develop more structured guidelines for the parenting responsibilities.

Currently, the provisions of Florida statutes which guide alternative dispute resolution for civil actions focus primarily on court-ordered mediation and arbitration. Chapter 44, F.S., sets forth the statutory framework for mediation alternatives to judicial action. The alternatives provided for in ch. 44, F.S., are court-ordered mediation, voluntary binding arbitration, voluntary trial resolution, and court-ordered mediation, the latter of which is the alternative most frequently applied in family court. The Supreme Court is authorized to establish standards and provide a certification process for mediators and arbitrators. Section 61.183, F.S., specifically authorizes the court to refer parties to mediation in proceedings in which parenting responsibility, primary residence, visitation, or support of a child is contested.

III. Effect of Proposed Changes:

Committee Substitute for SB 2640 provides the statutory framework for parenting coordination which is a process the court may use to assist certain parents in resolving their child related disputes and implement their parenting plan. The bill provides for the circumstances under which parenting coordination may be ordered, defines the duties of the parent coordinator, provides for minimum qualifications of a parent coordinator, prohibits parenting coordinators from performing certain other functions, and provides the parenting coordinator with limited immunity.

² Florida Chapter of the Association of Family and Conciliation Courts

Specifically, the bill provides a definition for “parenting coordination” in the definitions section of ch. 61, F.S. (s. 61.046, F.S.). “Parenting coordination” is defined as the process of assisting parents or legal guardians in implementing their parenting plan through the facilitation of dispute resolution and assisting parties to make decisions within the scope of the court order when there is prior approval of both parties and the court.

A new s. 61.125, F.S., is created by the bill for court ordered parenting coordination. The conditions under which a parenting coordinator may be ordered are set forth in the bill and require all of the following: the shared parenting plan has not been adequately implemented by the parents, mediation has not been successful or is considered inappropriate, and the use of a parenting coordinator would be in the best interest the child. A parenting coordinator may be appointed by the court either by a motion of the court, by a motion of one of the parents or parties, or if agreed to by the parties. The duties of a parenting coordinator are delineated in the bill and include assisting parents with implementing their parenting plan, developing more structured guidelines for implementing their parenting plan, learning communication skills and principles of child development, developing parenting strategies that minimize conflict, developing communication guidelines, and learning about their conflict and its effect on the children. In addition, the parenting coordinator may be granted the authority to determine specific matters relative to the implementation of the shared parenting plan if written consent is provided by both parties. Such a determination by the parenting coordinator will be considered binding until the court orders differently. The parenting coordinator’s determination is subject to “de novo review.”³ The basic requirement of a parenting coordinator to protect the child’s best interest is stipulated in the bill.

The bill establishes minimum qualifications for individuals who can be appointed by the court to serve as a parenting coordinator. Specifically, in order for an individual to serve as a court-appointed parenting coordinator, the individual must be either a mental health professional licensed under chapters 490 or 491, F.S., or a physician licensed under ch. 458, F.S., who is also certified by the American Board of Psychiatry and Neurology; have three years of post licensure practice; have completed the family mediation training certified by the Florida Supreme Court; and have had at least 20 hours of parenting coordination training in the areas of parenting coordination concepts and ethics, family dynamics in separation and divorce, the parenting coordination process, parenting coordination techniques, and family court procedures. An individual who has served as a parent coordinator in four or more cases prior to October 1, 2004, may be exempt from the mental health professional or physician licensure requirement, as well as the requirement for three years of licensure experience.

Committee Substitute for SB 2640 stipulates that communications with parenting coordinators are not confidential. An exception can be made if the court finds that confidentiality of all or part of the communication would be in the best interest of the child and both parties and the parenting coordinator agree to the court’s finding. Communication with other necessary parties is permitted if the appropriate releases have been signed by the parties. Referrals to parenting coordinators who charge a fee are permitted by the bill only when the court has determined that the family is able to pay the fee which must be based on financial affidavits submitted by the

³ “De novo review” is an appeal where the appellate court uses the trial court’s record. However, the review of the evidence and law is without deference to the trail court’s ruling. (Black’s Law Dictionary, Seventh Edition)

parties and other financial information available to the court or if the parties agree to the referral. The bill permits the parenting coordinator to be paid by either the parties or by public funds, if such funds are available.

Individuals who have served as a parenting coordinator for particular parties are prohibited from also serving as the child custody evaluator in any proceeding involving those same parties; from providing recommendations, determinations, or opinions as to child custody or the primary physical residence of those parties; from providing a determination on financial matters; from modifying any substantive rights contained in a court order or parenting agreement; or from providing therapy. The bill further provides that parenting coordinators cannot be held liable for performing the parenting coordinator function unless they acted in bad faith, with malicious purpose, or with wanton and willful disregard for the rights, safety or property of the parties. A definition of "parenting plan" is provided in the bill for the purpose of the parenting coordination section and is defined as an order, either temporary or final, which sets forth the issues involving the custody and parenting of a child, including residence, parental responsibility, visitation, or any other parental responsibility in any dissolution of marriage or other civil action in which these issues are involved.

The bill provides an effective date of October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Parents may be required to pay a fee for the parenting coordination service if the parents are determined financially able to pay.

C. Government Sector Impact:

The bill permits the parenting coordinator to be compensated with public funds, if such funds are available. The source of these funds is not identified, and the amount of public funds that would be expended is unknown.

The Office of State Courts Administrator did not identify a fiscal impact of this bill to the courts. However, their fiscal analysis did not take into account any possible effects from the pending implementation of Article V Revision 7.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, the dispute resolution alternatives to judicial action are located in ch. 44, F.S., which may be a more appropriate location for the parenting coordination provision.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
